

Robert Bos (36012)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

Curtis Building
6th and Walnut Streets
Philadelphia, Pennsylvania 19106

In The Matter Of: : Docket No.
The City of Philadelphia, :
NPDES Permit Nos. PA 0026662, : III-75-71W
PA 0026671, PA 0026689 :
PROCEEDINGS UNDER SECTION 309 : FINDINGS OF VIOLATION
(a)(3) AND (a)(4), FEDERAL : AND
WATER POLLUTION CONTROL ACT, : ORDER FOR COMPLIANCE
AS AMENDED [(33 U.S.C. Sections :
1319(a)(3) AND (a)(4)] :
:

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by the above-referenced Statute (hereinafter the Act) and by him duly delegated to the Regional Administrator of said Agency.

Findings of Violation

1. The City of Philadelphia is a municipal corporation of the first class of the Commonwealth of Pennsylvania.
2. Mr. Carmen F. Guarino is the duly appointed Commissioner of the Water Department of the City of Philadelphia (hereinafter the City).
3. The City owns and operates three Water Pollution Control Plants, one called the Northeast Plant, one called the Southeast Plant, and one the Southwest Plant, each of which has a discharge into the Delaware River, which is a navigable water under Section 502 of the Act, as amended [33 U.S.C. 1362(7)].
4. The City was issued National Pollution Discharge Elimination System (NPDES) Permits by the Director, Enforcement Division, EPA Region III, on December 31, 1974, for its Northeast, Southeast and Southwest Water Pollution Control Plants pursuant to Section 402 of the Act, as amended

[33 U.S.C. 1342]. By the terms of the permits they became effective February 13, 1975.

5. The City requested and was granted an adjudicatory hearing pursuant to the NPDES regulations [40 C.F.R. 125 (as amended in 39 F.R. 27078 - 27084)] to contest certain limitations and conditions of the above permits.

6. There are conditions in the above permits which have not been appealed as part of the adjudicatory hearing and are therefore in effect and enforceable. [40 C.F.R. 125 (as amended in 39 F.R. 27078, July 24, 1974)]

7. Included among the enforceable conditions is the requirement of the upgrading of the three Water Pollution Control Plants to achieve the effluent limitations set forth in the permit according to the following schedule: Southwest Plant, December 31, 1978; Northeast Plant, February 15, 1980; Southeast Plant, September 1, 1980.

8. EPA, pursuant to Title II of the Act, is funding 75% or approximately \$270 million for the upgrade of the above three Water Pollution Control Plants.

9. The NPDES Permit for the Southeast Plant requires the completion of the "feasibility study (CONCEPT DESIGN)" [p. 5 of 18, paragraph (D)(B)] for the Southeast Plant by February 28, 1975 and submission of written notice of compliance or non-compliance with the approved schedule date no later than fourteen days following the above date. This condition has not been appealed by the City in its adjudicatory hearing request and is therefore enforceable as of this date.

10. The City has failed to comply with the above permit condition.

11. The NPDES Permit for the Southwest Plant requires "Construction Progress Reports" to be submitted every three months. [p. 5 of 19, paragraph (D)(C)]. This condition has not been appealed by the City in its adjudicatory hearing request and is therefore enforceable as of this date.

12. The City has failed to comply with the above permit condition.
13. On June 6, 1975 Daniel J. Snyder, Administrator, EPA, Region III, requested information from Commissioner Carmen F. Guarino, Commissioner, Water Department of the City of Philadelphia, pursuant to Section 308(a) of the Act, as amended [33 U.S.C. 1318(a)].
14. In part, the above letter directed the City to provide to EPA, Region III, by July 15, 1975, dates by which specific actions related to the completion of project elements would be taken. The letter of June 6, 1975 is appended as Attachment I.
15. The City failed to produce the information on the due date.
16. On July 21, 1975 the City provided certain information as its response to the Regional Administrator's letter of June 6, 1975. Review by EPA of the submitted material indicated that the following requested items were not submitted: (a) Dates for the completion of Design Memoranda for the Northeast, Southeast and Southwest Plants. (b) Dates when the final plans and specifications would be initially submitted for the Southeast Plant. (c) A complete list of dates for submission of final plans and specifications for the Northeast and Southwest Plants. (d) Dates for submission of final (as bid) plans and specifications, beyond December of 1975, for the Northeast, Southeast and Southwest Plants.
17. Pursuant to Section 309(a)(4) [33 U.S.C. 1319(a)(4)] of the Act, EPA personnel met with Commissioner Guarino and his staff on August 5, 1975, to discuss the City's failure to submit the material requested in the Regional Administrator's letter of June 6, 1975.
18. At this meeting Commissioner Guarino agreed, in response to the request issued pursuant to Section 308(a) of the Act, to give to EPA the dates set forth in paragraph sixteen (16) above, the design phase and construction phase Critical Path Method (CPM) analysis for each water

pollution control plant, and the dates for completion of these CPM's.

This information was to be submitted by August 19, 1975.

19. A CPM analysis is a recognized standard management planning tool, utilized by engineering and construction firms to schedule design and construction projects in a systematic and timely fashion.

(See Attachment II)

20. The information set forth in paragraph sixteen (16) and eighteen (18) above, was not submitted to EPA by August 19, 1975.

21. On August 22, 1975, the Acting Regional Administrator, EPA Region III, issued an Order pursuant to Section 309(a)(3) of the Act [33 U.S.C. 1319(a)(3)] (See Attachment III). The Order directed the City to submit dates for completion of the CPM analysis from initial design phase to the completion of the facilities for each of the three plants by August 29, 1975.

22. The City's response to the Order was limited to the submission of dates by which Consultants will be hired to prepare construction phase CPM analyses and the dates by which the CPM analyses will be completed. These dates are: September 30, 1975, hiring date, and December 30, 1975, completion date (Southwest); December 31, 1975, hiring date, and March 31, 1976, completion date (Northeast); March 31, 1976, hiring date, and June 30, 1976, completion date (Southeast).

23. The City failed to include the dates for completion of the CPM analyses from the initial design phase to the completion of the construction facilities. Therefore, the City has not fully complied with the August 22, 1975 Order.

24. The NPDES Permit for the Northeast Plant contained a condition that required completion of final plans and specifications for that plant by August 31, 1975 and notice to EPA within fourteen (14) days of such completion. This condition has not been appealed by the City in its adjudicatory hearing request and is therefore enforceable as of this date. The City has submitted final plans and specifications for only five (5) of eleven (11) construction elements at the North-

east Plant and has failed to submit the letter of notification within fourteen (14) days as mentioned above.

25. Accordingly, based on the facts contained in paragraphs nine (9), ten (10), eleven (11), twelve (12) and twenty-four (24) above, setting forth violations of uncontested conditions in permits issued pursuant to Section 402(a) of the Act, the City is in violation of Section 301(a) of the Act. [33 U.S.C. Section 1801(a)] (three counts)

26. Accordingly, based on the facts contained in paragraphs thirteen (13) through sixteen (16) above, the City is in violation of Section 308 (a) of the Act.

27. Accordingly, based on the facts contained in paragraphs twenty-one (21) and twenty-three (23) above, the City is in violation of the terms of the Order of August 22, 1975, issued pursuant to Section 309 (a)(3) of the Act.

28. Accordingly, the City has failed to submit to EPA a CPM analysis for the design phase at each water pollution control plant as set forth in paragraph (18) above.

29. The facts as set forth in the above paragraphs indicate the City failed to provide EPA with appropriate and reasonable indicia of detailed plans, timetables and interrelationships of the program elements.

30. The absence of such indicia, including a complete and acceptable CPM analysis for each plant, casts strong doubt on the City's ability to complete the upgrading program in the most timely and economical fashion consistent with the terms and conditions of the respective permits.

31. Furthermore, absence of the above indicia affects EPA's ability to obligate the proper amount of money to the City to insure timely utilization of available Federal monies allocated to the project and ensure that the City will budget sufficient funds on a timely basis to keep its projects on schedule. Such management by CPM analysis is necessary

to avoid increased project costs resulting from influences associated with project delays.

32. Due to the magnitude of the City's projects and the associated large Federal grants, it is necessary to improve project management in order for the responsible Federal agencies to schedule the availability of Federal monies and ensure timely project payments. Further, management by CPM analysis is necessary to properly manage Federal, State, and local resources required to keep projects on schedule.

ORDER

Based on the foregoing findings and pursuant to the authority vested in the Administrator, Environmental Protection Agency, under Section 309(a)(3) of the Act, and by him delegated to the Regional Administrator, it is hereby ordered:

Terms of the Order

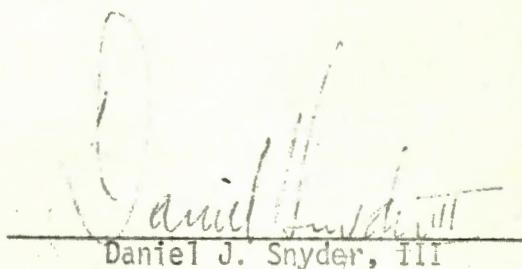
1. That the Commissioner of the Philadelphia Water Department shall submit to Director, Enforcement Division, United States Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania, by October 20, 1975, a design phase CPM, i.e., a completed CPM analysis for each water pollution control plant mentioned above, from the initiation of the design work or the present date (whichever is later) until the initiation of construction of each program element in each facility.
2. Any CPM analysis submitted pursuant to the above paragraph shall contain the following specific elements:

- a. Graphic representation of the CPM
- b. Inclusion in the above graph of at least one line for each project element supplied by the City of Philadelphia to EPA and set forth in Attachment IV.

- c. Designation of interrelationships for the project elements specified above.
 - d. Specification of the calculated critical path for each water pollution control plant.
 - e. Dates for the completion of each element milestone within each project element ending with the completion date of construction for each of the above facilities.
 - f. Inclusion of the date of initiation of the design for each project element.
 - g. Indication of the elapsed time between events in each project element
 - h. Indication of the effects on the projects shown as element milestones of identified interrelationships with any other governmental agencies.
3. Although the construction management phase of the CPM is not required by this Order, the design phase of the CPM shall include the time allowed and the completion date for the construction phase of each project element (See Attachment IV). The dates provided in the CPM analyses shall be those dates which are in the issued NPDES permits for the three water pollution control plants. These dates were not the subject of the request for adjudicatory hearing made by the City.
4. In accordance with the City's letters of August 18, 1975 and September 12, 1975 indicating that all CPM's will initially be done by consultants, the City shall (by October 20, 1975) begin to hire consultants and effectively plan to meet the dates submitted for the completion of the construction management CPM analysis as follows:
- a. December 31, 1975 - Completion of a construction management CPM analysis for the Southwest Water Pollution Control Plant.
 - b. December 31, 1975 - Hiring a consulting firm which will

prepare a construction management CPM analysis for the Northeast Water Pollution Control Plant.

- c. March 31, 1976 - Completion of a construction management CPM analysis for the Northeast Water Pollution Control Plant.
 - d. March 31, 1976 - Hiring a consulting firm which will prepare a construction management CPM analysis for the Southeast Water Pollution Control Plant.
 - e. June 30, 1976 - Completion of a construction management CPM analysis for the Southeast Water Pollution Control Plant.
5. This Order shall be effective upon receipt.



Daniel J. Snyder, III
Regional Administrator

Date: 03/07/76